

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

WINONA FOODS, INC.,

Plaintiff,

v.

Case No. 07-C-1003

Honorable William C. Griesbach

TIMOTHY J. KENNEDY, INC.

d/b/a KENNEDY LOGISTICS & WAREHOUSE,

Defendant.

**MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM
UNDER F.R.C.P. §12(b)(6), FOR LACK OF JURISDICTION OVER
THE PERSON UNDER F.R.C.P. §12(b)(2), FOR IMPROPER VENUE
PURSUANT TO F.R.C.P. 12(b)(3) OR, IN THE ALTERNATIVE,
TO CHANGE VENUE PURSUANT TO 28 U.S.C. 1404(a)**

The Defendant, Timothy J. Kennedy, Inc. d/b/a Kennedy Logistics of Illinois, by its attorneys, Davis & Kuelthau, s.c., moves the Court to dismiss this action for lack of jurisdiction over the Defendant, for improper venue, or, in the alternative, to change the venue to a proper forum, the Southern Division of the Central District of California, at Santa Ana, California, or, the Northern District of Illinois at Wheaton, Illinois, both places where the case could have been brought. This motion is made under F.R.C.P. §12(b)(6), §12(b)(2), §12(b)(3) and 28 U.S.C. 1404(a). These motions are supported by the accompanying brief and Affidavit of Norman Breyer.

Dated: March 28, 2008.

DAVIS & KUELTHAU, S.C.

s/ Thomas L. Schober

Thomas L. Schober

State Bar No.: 1013951

Attorneys for Defendant,

Timothy J. Kennedy, Inc.

d/b/a Kennedy Logistics of Illinois

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CERTIFICATE OF SERVICE

I hereby certify that on March 28, 2008, I electronically filed the foregoing with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

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Dated this 28th day of March, 2008.

s/ Thomas L. Schober

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